

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2016 MAR 22 PM 3:57

DEPUTY CLERK *EPR*

JOHN LEE JOHNSON,

Petitioner,

v.

WILLIAM STEPHENS, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,

Respondent.

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2:15-CV-0311

**REPORT AND RECOMMENDATION TO**  
**DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

On October 19, 2015, Petitioner JOHN LEE JOHNSON, a state prisoner, filed a Petition for a Writ of Habeas Corpus by a Person in State Custody (ECF No. 3). On January 22, 2016, Petitioner filed a Motion for Writ of Mandamus (ECF No. 7) seeking a determination on his petition.

The undersigned magistrate reviewed the petition, determined more information was needed, and issued a briefing order on February 16, 2016. Briefing Order, ECF No. 8. Petitioner filed a nine-page document that was largely unresponsive to the ten-questions set forth in the order. Response to Briefing Order, ECF No. 9. A second briefing order was entered finding Petitioner did not provide responsive, clear answers to the questions or the requested TDCJ documentation and gave Petitioner a final opportunity to provide the answers necessary for the case to proceed. Second Briefing Order, ECF No. 10. Petitioner did not reply to the Court's Second Briefing Order. He did, however, file a Leave to File Amended Habeas Corpus (ECF No. 11), which is pending before the Court. The Leave to File Amended Habeas Corpus,

including the proposed amendment, fail to provide any clarity regarding what grounds for relief Petitioner asserts or answer the questions contained in the Court's two briefing orders.

While a document filed a pro se litigant is to be liberally construed, Petitioner must still "set forth facts giving rise to a claim upon which relief can be granted." *Johnson v. Atkins*, 999 F.2d 99, 100 (5th Cir. 1993). The undersigned has given Petitioner wide latitude to clarify his petition and the grounds upon which he seeks relief, but Petitioner has failed to comply with the Court's repeated orders. Accordingly, the undersigned recommends that Petitioner's Motion for Writ of Mandamus and Motion for Leave to File an Amended Habeas Corpus be DENIED and the Petition for Writ of Habeas Corpus be DISMISSED.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that Motion for Writ of Mandamus and Motion for Leave to File an Amended Habeas Corpus be DENIED and the Petition for Writ of Habeas Corpus by a Person in State Custody filed by petitioner JOHN LEE JOHNSON be DISMISSED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 22nd day of March, 2016.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the "entered" date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the "entered" date. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).